



Town of Loxahatchee Groves

Regular Meeting, May 4, 2010 at 7:00 p.m.

MINUTES

Loxahatchee Groves Water Control District
101 West "D" Road, Loxahatchee Groves

Frank R. Spence, Town Manager
Michael Cirullo, Town Attorney; Goren, Cherof, Doody & Ezrol, P.A.
Ann Harper, Town Clerk

OPENING 1 – 4

Mayor Browning called the meeting to order at 7 p.m. In addition to Mayor Browning, the following Council members were present: Councilmen Ron Jarriel, Ryan Liang, Jim Rockett, and Vice-Mayor Dennis Lipp. After the Pledge of Allegiance, Mayor Browning gave the Invocation. Present from Staff were Frank Spence, Town Manager; Michael Cirullo, Town Attorney; and Ann Harper, Town Clerk.

5) Additions and Deletions

Mr. Spence said the Aviary Committee will present a Minority Report which will be given by John Ryan. He added a sub-point to Item #16, Federal Property Registration Corporation, a vacant property registration system, and Item 21A, Code Enforcement.

Vice-Mayor Lipp said he will add a list of items to the agenda under Old Business.

6) Approval of Agenda

Motion by Vice-Mayor Lipp, seconded by Councilman Jarriel, to approve the agenda as amended. The motion carried by voice vote, 5/0.

CONSENT AGENDA

7) Approval of Town Council Meeting Minutes – Regular Meeting April 6, 2010

Motion was made by Councilman Liang, seconded by Vice-Mayor Lipp, to approve the Consent Agenda. The motion carried by voice vote, 5/0.

PRESENTATIONS

8) Certificate of Appreciation for Linda & Sundar Heeraman

Mayor Browning presented the Certificate to Mr. and Mrs. Heeraman, who paid for the pine seedlings which the Town ordered and will be available to residents for planting. Mayor Browning said he appreciated what they have done for the Town, and that is the true spirit of neighborhood cooperation.

COMMITTEE REPORTS

9) Aviculture Committee Report

Mr. Spence said this report will be given by Paul Reillo, Chairman of the committee. The five members appointed by Council at their April 20th meeting met Thursday, April 29, and Mr. Spence acted as facilitator.

Mr. Riello referred to his report which was distributed to committee members and to the Council members. The report is attached to these minutes. The major objective of the meeting was to come up with specific recommendations to accommodate aviaries and aviary concerns. The central theme was how to address noise. There was a lot of discussion about the scope of regulation and to what degree aviaries are agriculture. The committee agreed that this is a matter to be decided by the State of Florida, not this committee or the Town council or the County Commission. Everything that is recommended in the committee report was recommended unanimously. The committee agreed that noise level standards should be for all activities in the town, including aviaries. The members were concerned about determining a realistic limit for land-use activities in the Groves. They recommended that an independent study be conducted to survey noise levels in order to determine a universal standard for the Groves. The committee also recommended that there be no special exception for noise limits for "bona fide agricultural activities" because all activities in the Groves should be covered. The Committee recommended a complete revision to Section 80-045 in the County code, as outlined in the report.

Mayor Browning asked for comments from the Council.

Councilman Rockett said what I see here is two categories and the invention of "commercial aviaries", which the committee members represented based on size. For this kind of aviary the Committee recommends no city codes and the Town defers regulations to a "higher authority". For the "hobby breeder" there is a long list of things, some of which do not mean anything because they "encourage." The "encourage" should be changed to "shall" so it will mean something. The category of aviary should not be split, and the rules recommended for "hobby breeders" should apply to all, with the "encourages" changed to "shall." Regarding the recommendation for a study of noise levels, noise not an issue in any other part of the code, so it should not be necessary to have a complete study. Councilman Rockett read comments in print which were written by a person who is representative of the aviculture group asking the Council for no setback or acreage restrictions. The writer said he was trying to round up people with birds to go to the next Council meeting because the Council will back down if there are a lot of people complaining. One other thing is that we haven't heard much about is disease. The only issue we have heard about is noise. We need some kind of best management practices to try to prevent spread of disease. He would like the Council to look at a set of best management practices from Georgia which was put together by aviculturists and people in the industry. Our State has not done it yet, and we should consider adopting it in our code.

Councilman Liang said BMP's are an excellent set of guidelines. People should follow them because they want to, but these guidelines should not be forced upon them.

Vice-Mayor Lipp said he appreciates Councilman Rockett's position on this. We are going to have all agriculture and all interests in Loxahatchee Groves conform to the same noise standards on a complaint-driven system. He asked Paul Reillo what the Florida Wildlife Commission (FWC) does as far as disease and maintaining a healthy flock.

Paul Reillo said we discussed what FWC regulations mean. The FWC licensing mandates the use of BMP's because they are worked into the licensing process, and there are surprise inspections of the aviaries at any time.

Vice-Mayor Lipp asked Mr. Reillo why is there such a difference between the commercial breeder, which you are allowing the State to control, and the hobby breeder, which has to conform to eight regulations.

Mr. Reillo said the commercial breeder is a bona-fide agricultural/aviculture operation, and there needs to be a clear distinction between that operation and a hobby breeder who has some birds in the back yard. The commercial breeder is in the business to produce and sell birds.

Vice-Mayor Lipp commented that the purpose of parrots is not to provide food, it is primarily a pet.

Mr. Reillo said parrots are bred for the pet trade and to supply breeder birds. This is where the regulation as to whether or not you consider the activity agriculture is a State decision.

Vice-Mayor Lipp brought up the subject of acceptable decibel readings for noise levels. He asked for a consensus to instruct the Attorney to contact FWC and the Department of Agriculture and ask for help. Attorney Cirullo said we are talking about the FWC and the "right to farm." The Town cannot put in a regulation which conflicts with what the FWC regulates. He believes that if you put something in the code to regulate setbacks and noise, it would probably not be in the Florida Statutes and would therefore not be pre-empted.

Councilman Jarriel said he was at the meeting, and it seemed like the priority of the meeting was noise. One thing we have to do something about is the minimum lot size. He does not want the Groves to be the place where people come and put aviaries on one or two acres when they can't go into Wellington or Lake Worth or other cities. For any new businesses coming into Loxahatchee, he would like them to get an exception from the Council when it comes to aviaries.

Vice-Mayor Lipp said, regarding the noise issue, that this will be discussed in section 80.045 when the Council gets to that part of the LDR draft. In the meantime, he would like to activate a noise ordinance before the LDR's are completed.

In response to Councilman Rockett's question, Attorney Cirullo said he recommended staying away from words like "encouraged" and "best efforts" in the Code because it has no enforceability. He said he would report back to Council on what he finds with the FWC and what may exist in the Statutes and rules. He will also check on what their inspection process is.

Minority Report – John Ryan

John Ryan said he and Jim Berke were the only non-aviary members of the Committee. He believes that the Committee's work should remain open so the committee members can submit reports to Town Hall for distribution. He noted one correction to the report given by the Chairman: on Item 7, the Committee decided to use "shall" instead of "encourage." Additionally Mr. Ryan suggested two inserts under the "Commercial Aviary" category, as follows: insert as (3) located on minimum 5 acre plots and also subject to conditions 5 through 8 of the hobby breeders; and insert as (4) permits for new or expanded aviaries shall be on a special exception basis and require Council approval.

Mayor Browning thanked Mr. Ryan for his report.

Public Comments:

Todd McLendon said the Council is trying to negotiate a private, not a public, nuisance.

Howard Voren spoke about the Florida statutes for agriculture and a letter from the Department of Agriculture.

Elise Ryan clarified that the Fish and Wildlife do not have any BMP's that have been approved by that Department.

Maureen Lefkowitz said the only reason she made this problem public is because she has a concern about the community and the people in the community

PUBLIC HEARING

10) None

ORDINANCES

11) None

RESOLUTIONS

12) None

OLD BUSINESS

13) Continued discussion of LDRs

Mr. Spence said this is on the agenda because the Council cannot take action during a workshop. He said that petitions have been received from the residents that live around Sunsport and wanted to make Council members aware of their concerns. He entered the petitions into the official records..

Vice-Mayor Lipp suggested scheduling a workshop on this issue.

Public Comments

Seth Brier said several customers told him he should attend the Council meeting tonight because of the feed store. Discussion was held regarding the land use designation and zoning on his property, and he was advised to schedule a time for his attorney and the Town Attorney to meet.

Ernie Senatore raised questions about the number of livestock and horses he could have on his land. Councilman Jarriel said the Council has agreed to stay with the number of animals that the County has allowed on property.

14) Report on purchase of laptop computers

Mr. Spence said this was put on the agenda at the request of Vice-Mayor Lipp. Normally these items are listed under Administrative Update.

We are collecting technical information from people in the business, and we will come up with recommendations and bring them back to Council.

Councilman Rocket asked Mr. Spence to send the recommendations to the Council members before the next meeting.

Councilman Jarriel said rather than report to us, he would like the report to be sent to the Finance Committee.

Councilman Liang said sending it to the Finance Committee would make it take longer, and he also suggested that Staff look into leasing the computers and piggy-backing onto the contract with a larger organization, such as the School Board.

In response to Mayor Browning's question, Attorney Cirullo said Council will need to set a policy regarding what the computers can and cannot be used for and how service will be provided.

15) RFP for Bulk Vegetative pick-up week

Mr. Spence said at the last meeting Council authorized him to place an RFP ad in the Town Crier. The ad shows that the bid opening will be May 24th at 2 p.m., and the ad requests the price per truck by truck size, and the price cap is \$15,000.

Councilman Rockett said he thought we were going to go through the FAAC to create the RFP, review the submissions and make a recommendation to the Council.

Councilman Liang said he is Council representative to the FAAC, and the Finance Committee was responsible for getting accountants for the audit.

Mayor Browning said if there was enough lead time, it would be a good idea to have the RFP process go through the FAAC. We might want to make it a Council policy to run it by them.

16) Condemnation process for derelict properties

Mr. Spence said in other cities the Building Official declares homes and/or buildings as unsafe structures. Palm Beach County has recommended that the Town use a consultant, such as Calvin Giordano, to do this. He contacted the company to come up with a course of action and will come back with specifications.

17) Weight limits on trucks

Mr. Spence said he contacted the Florida Association of Counties and asked whether or not they knew of any cities that imposed a weight limit for trucks on dirt roads. The Association did not have any knowledge of any cities that had weight limits. The Council asked him to contact other states with this question.

18) Filing of lawsuit against Donna Brosemer

Mr. Spence said he filed the lawsuit, and it will take six or eight weeks to get back to him.

Additions to Old Business by Vice-Mayor Lipp

Vice-Mayor Lipp said the Finance Committee wanted the following "punch list" of projects:

(1) Use of 5 cent gas tax

Mr. Spence said since we are going to take over the maintenance of non-district roads, we will need to use the gas tax revenue. The Finance Director has obtained information from the County regarding approved uses of the 5 cent and 6 cent gas tax revenues, and 50% of the revenue from the 5 cent tax must be used for mass transit, such as tri-rail. We are going to ask the County Commission for a waiver of this requirement. He called the County in an effort to locate the specific ordinance or law in order to site the proper authority, but even the County Attorney's office cannot locate the source which requires this expenditure. They think it has been in effect since around 1995. This is an ongoing project.

(2) Paving of Water Control District Parking Lot

Mr. Spence said it is doubtful that we can use gas tax money to pave this lot, and he can't recommend doing it because the funds will be needed for maintenance of the non-district roads.

(3) 40th Street North

Mr. Spence said the gates are up. Last Wednesday our representative from Florida Municipal Insurance Trust (FMIT) came to see the site and made sure we were covered by our insurance policy.

(4) Public Roads and Private Driveways

Vice-Mayor Lipp said he had a question about Town jurisdiction. He asked how can the Town take over a road to be a right-of-way when, if you look at the documents, it is an easement for public access. Mr. Spence said he deleted the true driveways from the official map, and he will have to verify that Raymond Drive is on our list for gas tax. His goal is to name every street and have signs installed.

(5) Task Force – Shovel-ready projects

Vice-Mayor Lipp asked how do we stand on identifying shovel-ready projects for the Task Force meeting.

Mr. Spence said he submitted the largest property formerly known as the "Simon Property." Vice-Mayor Lipp said the Simon Property is 96 acres, and the other side of the property is what the Equestrian Partnership has for their assisted living facility.

(6) CRA

Vice-Mayor Lipp asked the status of declaring the area between E and C as a CRA. Mr. Spence said he is eager to setup a CRA, and will require designating the area as "blighted". These districts are supported by tax-increment funding (TIF) and have great potential for development.

(7) Gas Tax Money

Councilman Jarriel asked the status of speaking to Commissioner Santamaria regarding our request to change the use of the Town's gas tax funding. Vice-Mayor Lipp said that was on his list of things to do, but we first have to find the State Statute that defines the distribution. Mr. Spence said the Mayor will make the presentation to the County Commission when we are ready.

NEW BUSINESS

19) PBC League of Cities Installation Luncheon – May 28, 2010

Vice-Mayor Lipp asked Mr. Spence to make a reservation for him for the May 28th meeting.

20) Creation of Noise/Nuisance Ordinance

(Vice Mayor Lipp)

Discussion

Vice-Mayor Lipp said that since it will be a while before the LDR's are completed, he would like a consensus to direct the Manager and the Attorney to develop a noise ordinance and to look into the part of the Port St. Lucie ordinance which deals with low base noise, which does not show up on a decimal meter.

Councilman Liang said then we need to get a Code Enforcement RFP so we will have someone to enforce it.

Mr. Spence said the Council was given just before the meeting the correspondence from Larry Lefkowitz which is a study he did regarding noise. It is for the Council to consider.

Attorney Cirullo asked the Council whether or not they want to direct him to prepare an ordinance for first reading, and he was directed to prepare it.

Public Comments

Todd McLendon said it is premature to come up with a noise ordinance before we find out what the noise level is.

21) Addendum Items if necessary

Code Enforcement (added earlier in meeting)

Mr. Spence said after he began working for the Town, the Code Enforcement program was changed to provide a three-hour minimum payment at a fair rate for the inspector. Complaints are held until there are three or more in order to make it worthwhile for the inspector to come for an assignment. Since the passage of the horse manure dumping ordinance, we have been receiving several calls a day notifying us of illegal dumping. People who live in the Acreage are complaining about the odor from manure in the Groves. We sent a letter to the haulers who are registered in Wellington along with a copy of the ordinance letting them know that they must register with the Town, and the property owners must let us know when the haulers are delivering manure to them. We are also receiving calls about lot clearing. We need someone out in the field to investigate these complaints. The next step is to issue an RFP for Code Enforcement Services. We need someone who can respond immediately to these complaints, and the person will probably work about ten hours a week or on an as-needed basis. The RFP will be placed on the Finance Committee agenda for their next meeting.

Vice-Mayor Lipp asked what we need to do to establish fines for code violations. Attorney Cirullo said the Council could set the fines by ordinance or could follow State Statutes which uses \$250 for first violation and \$500 for the next.

ADMINISTRATIVE UPDATE

22) Administrative Update

a. FDOT notice of Public Workshop on Southern Blvd Improvements (for Forest Hill to SR 880) on May 18, 2010 at Bink's Forest Country Club

Mr. Spence said he would attend this meeting.

b. Update on Manure Haulers

Mr. Spence said we are ordering decals for the haulers who have registered with the Town. Also, we are pro-rating the annual fee, and annual renewals will begin on October 1st, the beginning of the new fiscal year.

Vice-Mayor Lipp asked whether or not we can expand the registration to all haulers who are coming into Loxahatchee Groves. Attorney Cirullo said as of now the registration is limited to haulers who bring animal waste into the Groves. Mr. Spence said this could be tied into a program for weight restrictions.

CLOSING COMMENTS

23) Public Comments -- no speakers

24) Town Attorney Comments -- Attorney Cirullo called for an Executive Session (Shade Session) for June 1, 2010, beginning at 5 p.m.

25) Town Council Member Comments

Vice-Mayor Lipp suggested that future meetings begin at 6 p.m. with a workshop on the LDR's in order to complete the project. He also suggested that the Town arrange for a noise study to be made before an ordinance is prepared, and he asked the Town Manager to bring back the cost for having a study made.

Council agreed to ask the Attorney to attend the 6 p.m. workshop on June 1, 2010, but it is not necessary for him to attend the workshop on May 18, 2010.

Councilman Liang said he was disappointed that the Council did not accomplish more in the workshop held before this meeting. He suggested that the Council members submit their comments to the Town Manager so they can be distributed to all members before the next workshop in order to speed up the process. He also suggested dedicating one meeting a month to working on the LDR's.


Council agreed to begin the May 18, 2010 meeting at 6 p.m. with a workshop on LDR's from 6 to 7 p.m., hold a short regular meeting beginning at 7 p.m., then return to the workshop at the conclusion of the regular meeting.

Councilman Rockett said:

- (1) He keeps hearing that the Council can't do things. If the Council needs an opinion on what we can or can't do, we should ask our Town Attorney.
- (2) We should dedicate as much time as we can to completing the LDC's. We are laying a foundation for future Councils, and he would rather start a little strict and then back off things in the future.
- (3) He would like to hear a presentation from Larry Lefkowitz regarding his complaint.

26) Adjournment

There being no further discussion and no additional public comment, the meeting was adjourned at 10:05 p.m.


DAVID BROWNING, Mayor

____ June 15, 2010 ____
Date Council Approved

Attest:


Ann Harper, Town Clerk